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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 110708376-3995-02]

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Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Trawl Rationalization Program; Cost Recovery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This action implements a cost recovery program for the Pacific coast groundfish trawl rationalization program, as required by the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This action includes regulations that affect all trawl rationalization program sectors (Shorebased Individual Fishing Quota (IFQ) Program, Mothership Cooperative Program, and Catcher/Processor Cooperative Program) managed under the Pacific Coast Groundfish Fishery Management Plan (FMP).

DATES: Effective [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is summarized in the Classification section of this final rule. NMFS also prepared an Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule. Copies of the IRFA, FRFA and the Small Entity Compliance Guide are available from William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way, NE, Seattle, WA 98115–

0070; or by phone at 206–526–6150. Copies of the Small Entity Compliance Guide are also available on the West Coast Region’s website at <http://www.westcoast.fisheries.noaa.gov/>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115–0070, and to OMB by e-mail to OIRA_Submission@omb.eop.gov, or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Jamie Goen, 206-526-4656; (fax) 206-526-6736; jamie.goen@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

In January 2011, NMFS implemented a trawl rationalization program, a type of limited access privilege program (LAPP), for the Pacific coast groundfish fishery’s trawl fleet. The trawl rationalization program is also referred to as the trawl “catch share” program. The program was adopted through Amendment 20 to the FMP and consists of three sectors: an IFQ program for the shorebased trawl fleet (including whiting and non-whiting fisheries); and cooperative (coop) programs for the at-sea mothership (MS) and catcher/processor (C/P) trawl fleets (whiting only). Allocations to the limited entry trawl fleet for certain species were developed through a parallel process with Amendment 21 to the FMP.

Since implementation, the Pacific Fishery Management Council (Council) and NMFS have been working to address additional regulatory requirements associated with the trawl rationalization program. One such requirement is cost recovery, where NMFS collects fees from the fishing industry to cover part of its costs of management, data collection, and enforcement of

the trawl rationalization program. This rule creates a cost recovery program for the trawl rationalization program in compliance with the requirements of the MSA, and based upon a recommended methodology developed in coordination with the Council.

In accordance with the MSA, 16 U.S.C. 1853(c), 1853a(e), 1854(b), 1854(d)(2), 1855(d), NMFS shall collect mandatory fees of up to three percent of the ex-vessel value of groundfish by sector (Shorebased IFQ Program, MS Coop Program, and C/P Coop Program). The Council discussed the structure and methodology of cost recovery over its April, June, and September 2011 meetings, with final Council recommendations to NMFS during the September 2011 Council meeting. In addition, NMFS received further guidance on these issues from the Council at its September 2012 meeting.

This final rule implements the cost recovery program as proposed at 78 FR 7371 (February 1, 2013), with the exception of the minor changes described under “Changes from the Proposed Rule” later in this preamble. Generally, this final rule will require fish buyers to collect cost recovery fees from fish sellers beginning January 2014. Fish buyers will remit those fees to NMFS via online payments through Pay.gov.

Fees will be collected during the 2014 calendar year to recover NMFS estimated costs from the previous fiscal year. NMFS costs from 2011 and 2012 will not be collected retroactively.

Fee Percentage by Sector for 2014

As described in the proposed rule, during the last quarter of the calendar year, NMFS will announce in a Federal Register document the next year’s applicable fee percentages and the applicable MS pricing for the C/P Coop Program. NMFS will calculate and announce the fee percentage after each fiscal year ends, and before the fee would go into effect on January 1 of the

following year. For 2014, NMFS is announcing the fee percentages for each sector in this final rule preamble.

NMFS will calculate the actual fee percentage by sector using the best available information, not to exceed three percent of the ex-vessel value of fish harvested. As explained further below, the fee percentages for the first year of cost recovery are low because NMFS only included the incremental costs of employees' time in the fee percentage calculation rather than all incremental costs of management, data collection, and enforcement.

For 2014, the fee percentages by sector are:

- 3.0 percent for the Shorebased IFQ Program,
- 2.4 percent for the MS Coop Program
- 1.1 percent for the C/P Coop Program.

To calculate the fee percentage by sector, NMFS used the formula specified in regulation at § 660.115(b)(1), where the fee percentage by sector equals the lower of three percent or direct program costs (DPC) for that sector divided by total ex-vessel value (V) for that sector multiplied by 100.

- Shorebased IFQ Program-
 $3.0\% = \text{the lower of } 3\% \text{ or } ((\$1,877,752.00 / \$48,182,167) \times 100)$
- MS Coop Program-
 $2.4\% = \text{the lower of } 3\% \text{ or } ((\$274,936.05 / \$11,453,663) \times 100)$
- C/P Coop Program-
 $1.1\% = \text{the lower of } 3\% \text{ or } ((\$176,460.05 / \$16,763,066) \times 100)$

“DPC”, as defined in the regulations at § 660.115(b)(1)(i), are the actual incremental costs for the previous fiscal year directly related to the management, data collection, and

enforcement of each sector (Shorebased IFQ Program, MS Coop Program, and C/P Coop Program). Actual incremental costs means those net costs that would not have been incurred but for the implementation of the trawl rationalization program, including both increased costs for new requirements of the program and reduced costs resulting from any program efficiencies. For 2014, the first year of cost recovery, NMFS only included the cost of employees' time (salary and benefits) spent working on the program in calculating DPC because of limited agency resources and time to calculate additional incremental costs. While employees' time spent working on the trawl rationalization program has been coded and tracked since 2011, not all additional categories of incremental costs have been tracked in a manner that can be quickly compiled. For example, the incremental costs of travel, rent, and equipment will require research and documentation before they can be adequately accounted for. That additional work could not be completed in time for the final rule to be effective in January 2014. Therefore, the DPC for 2014 underestimates costs compared to all incremental costs of management, data collection, and enforcement.

NMFS expects that for 2015 and beyond, DPC will include all NMFS incremental costs, potentially including some federal costs resulting from duties performed by the states, as well. Between the proposed and final rule for the cost recovery program, NMFS discussed with the states of Washington, Oregon, and California whether the costs of some state-performed activities resulting from the trawl rationalization program are costs that could be recovered, consistent with the requirements of the MSA. While NMFS did not include federal costs incurred by the states in the calculation of DPC for the 2014 fee percentage, NMFS will continue to work with the states for 2015 and beyond to determine what federal costs being borne by the states might be included.

NMFS will work with the Council to review the costs included in the calculation for 2014 and to determine additional incremental costs to be included for 2015 and beyond. For additional incremental costs, NMFS will consider the Council recommendation to use Appendix B of the Cost Recovery Committee (CRC) Report from the September 2011 Council meeting (Agenda Item G.6.b) as guidance in calculating incremental costs associated with the program.

“V”, as specified in § 660.115(b)(1)(ii), is the total ex-vessel value for each sector from the previous calendar year. The ex-vessel value for each sector is further described in the definition section at § 660.111, and includes the total ex-vessel value for all groundfish species. For 2014, NMFS used the ex-vessel value for 2012 as reported in Pacific Fisheries Information Network (PacFIN) from electronic fish tickets to determine V. The electronic fish ticket data in PacFIN is for the Shorebased IFQ Program. Therefore, the ex-vessel value for both the MS Coop Program and the C/P Coop Program is a proxy based on the Shorebased IFQ Program ex-vessel price and on the retained catch estimates (weight) from the observer data for the MS and C/P Coop Programs. NMFS is using data from PacFIN and not the ex-vessel values reported on buyback forms (IFQ and MS submit buyback forms) because that data is not readily available in a database. NMFS will announce the details of the calculation and the data used in the NMFS annual report (released with the final rule in fall 2013 and for 2015 and beyond, in the spring each year). See “Changes from the Proposed Rule” for an explanation of calculating ex-vessel value from the previous calendar year instead of from the previous fiscal year.

MS Pricing for C/P Coop Program Fee Amount in 2014

“MS pricing” is the MS Coop Program’s average price per pound from the previous complete calendar year. The MS pricing will be used by the C/P Coop Program to determine their fee amount due (MS pricing multiplied by the value of the aggregate pounds of all

groundfish species harvested by the vessel registered to a C/P-endorsed limited entry trawl permit, multiplied by the C/P fee percentage, equals the fee amount due). However, because the MS Coop Program's average price per pound as reported on the cost recovery form is not yet available, the MS pricing for the first year of cost recovery is based on the average price per pound of Pacific whiting as reported in PacFIN from the Shorebased IFQ Program. In other words, data from the IFQ fishery is used as a proxy for the MS average price per pound to determine the "MS pricing" used in the calculation for the C/P sector's fee amount due. For 2015 and beyond, NMFS may either continue to calculate MS pricing from PacFIN, or may use values derived from those reported on the MS Coop Program cost recovery form from the previous calendar year, depending on what NMFS determines is the best information available. As described in the proposed rule, NMFS will announce the next year's applicable MS pricing for the C/P Coop Program along with the fee percentage for all sectors in a Federal Register notice during the last quarter of the calendar year. However, for 2014, NMFS is announcing the MS pricing in this final rule preamble as follows:

- \$ 0.14/lb for Pacific whiting.

How and Where to Pay Cost Recovery Fees

During the last quarter of the calendar year, NMFS will publish in the Federal Register information on how and where to pay cost recovery fees, in addition to the applicable fee percentages and MS pricing. This final rule's preamble includes that information for 2014.

Cost recovery fees can only be paid online through the Federal Government's online payment system, Pay.gov. Users can access the Pay.gov website directly or click on the link to Pacific Coast Groundfish Cost Recovery for their sector (IFQ, MS, or C/P):

<https://pay.gov/paygov/agencySearchForms.html?nc=1375298963306&agencyDN=ou%3DFA>

[National+Oceanic+and+Atmospheric+Administration%2Cou%3DFA_Department+of+Commerce%2Cou%3DFA_Executive+Branch%2Cou%3DFederal+Agency%2Cou%3DTreasury+Web+Application+Infrastructure%2Cou%3DFiscal+Service%2Cou%3DDepartment+of+the+Treasury%2Co%3DU.S.+Government%2Cc%3DUS&alphabet=N](#)

Users can also access Pay.gov through a link on our West Coast Region trawl catch share program website at:

http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish_catch_shares/index.html

For the Shorebased IFQ Program, the IFQ first receiver (first receiver site license holder), as the fish buyer, must collect the fee from each catcher vessel (fish seller) at the time of landing groundfish in the IFQ fishery, or in the case of post-delivery payment, at the time of payment. Each fish buyer (IFQ first receiver) is required to maintain a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue and disbursing the fee revenue directly to NMFS. This account is called a “deposit account.” Each fish buyer, no less frequently than at the end of each month, must deposit all fees collected, not previously deposited, that the fish buyer collects through a date not more than two calendar days before the date of deposit. Neither the deposit account nor the principal amount of deposits in the account may be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to NMFS. The fish buyer is entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the deposit account for the fish buyer’s own use and purposes. The fish buyer is responsible for remitting payment to NMFS on a monthly basis at the same time the buyback fee is due (i.e., no later than the 14th of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes). Payment to NMFS must be the full amount of deposit principal from the deposit

account. For any post-delivery payments by the first receiver to the vessel, the first receiver must withhold the fee from such payments at the time of payment and remit that fee to NMFS in the upcoming month's payment.

For the MS Coop Program, the structure of fee payment and collection is the same as for the Shorebased IFQ Program, except that the fish buyer and fish seller are defined differently and, because the fleet operates at sea, there is no "landing." For the MS Coop Program, each catcher vessel (fish seller, including vessels registered to an MS/CV-endorsed limited entry trawl permit and any limited entry trawl permits without an MS/CV endorsement while they are participating in the MS Coop Program) is charged the fee at the time of delivery to the mothership (fish buyer—defined as the owner of a vessel registered to an MS permit, the operator of a vessel registered to an MS permit, and the owner of the MS permit registered to that vessel). The fish buyer must then remit payment to NMFS monthly in coordination with the buyback fee (i.e., no later than the 14th of each month). For any post-delivery payments by the mothership to the catcher vessel, the mothership must withhold the fee from such payments at the time of payment and remit that fee to NMFS in the upcoming month's payment. In addition, the MS Coop Program is subject to the same deposit account requirements as the Shorebased IFQ Program.

For the C/P Coop Program, the structure of fee payment and collection is different than the Shorebased IFQ and MS Coop Programs. In the C/P Coop Program, the C/P (fish buyer—defined as the owner of a vessel registered to a C/P-endorsed limited entry trawl permit, the operator of a vessel registered to a C/P-endorsed limited entry trawl permit, and the owner of the C/P-endorsed limited entry trawl permit registered to that vessel) is responsible for paying the full fee in the last quarter of the calendar year and by December 31 each year. The fee is for the

harvests of groundfish for the calendar year by each vessel registered to a C/P-endorsed limited entry trawl permit. For the purposes of cost recovery, the C/P is described as both the fish buyer and fish seller. Unlike the Shorebased IFQ Program and the MS Coop Program, fish buyers in the C/P Coop Program are not required to maintain segregated deposit accounts because the fish seller and the fish buyer are always the same entity and they only make one payment to NMFS per year.

Comments and Responses

NMFS solicited public comment on the cost recovery proposed rule (78 FR 7371, February 1, 2013). The comment period as published in the proposed rule Federal Register notice ended March 18, 2013. However, regulations.gov did not accept public comment submitted through their website after March 17, 2013. Because of the mistake in regulations.gov, NMFS accepted comments received via email, fax, or mail a day beyond the comment period, through March 19, 2013. Because the proposed rule also included a collection-of-information requirement subject to review and approval under the Paperwork Reduction Act (PRA), the responses to public comments in this section of the preamble address the proposed rule and the PRA submission. NMFS received eleven letters of comments on the proposed rule submitted by individuals or organizations.

Timing of Implementation

Comment 1. Cost recovery should be delayed until the start of a calendar year and until January 1, 2014, at the earliest. Implementing cost recovery mid-year in 2013, as proposed, could create inequity in the fleet, penalizing fishermen who primarily fish later in the year.

Response. NMFS agrees that starting cost recovery at the beginning of a calendar year will affect all sectors (IFQ, MS, C/P) equally. In light of the public comment and the need for

NMFS to complete additional internal steps necessary for the operation of the cost recovery program, NMFS delayed implementation of cost recovery until January 2014 at the earliest.

Comment 2. NMFS should prioritize additional, or “trailing,” amendments to the trawl rationalization program that continue to move the fleet toward environmental conservation and economic sustainability before cost recovery. NMFS should prioritize those trawl trailing actions that are immediately beneficial to the fleet, such as quota share trading, decreasing monitoring costs (electronic monitoring), gear-related issues (where, when, and with what gear fishermen can fish), and other important trailing actions that improve the fleet’s efficiency and access to target species. “Left-over” restrictions on where and how to fish from fishery management actions before trawl rationalization are limiting access to target species (and limiting revenues) and are no longer relevant with 100% accountability. Prioritizing trailing actions that improve the fleet’s flexibility and economic efficiency will enhance the trawl rationalization program’s durability, and will improve the fleet’s profitability and ability to pay cost recovery fees in later years. Industry was aware that downsizing of the fleet would be an outcome of the trawl rationalization program, but NMFS should take steps to avoid accelerating that outcome. Cost recovery should not be implemented before economic benefits have been adequately realized and while fishermen are struggling to pay operating costs, including high fuel prices. The trawl rationalization program has produced no net gains and has increased costs.

Response. NMFS has prioritized trailing amendments to the trawl rationalization program that continue to move the fleet toward environmental conservation, economic sustainability, and increased flexibility, along with cost recovery. NMFS has prioritized the following trawl trailing actions: (1) response to litigation; (2) original trawl rationalization program provisions not yet implemented (e.g. QS trading, cost recovery, new observer

providers); and (3) items that increase flexibility and economic efficiency. Items under (3) must have been recommended through the Council process and have appropriate analysis before NMFS can implement them. NMFS has set these priorities in light of the approaching MSA-required 5-year review for LAPPs, with the goal of fully implementing the trawl rationalization program and then maximizing its potential.

For the trawl rationalization program, NMFS spent much of 2012 and early 2013 responding to litigation (priority 1). NMFS is now in the process of implementing rulemakings for priorities 2 and 3, including: chafing gear, observer and catch monitor provisions, cost recovery, and additional program improvement and enhancements (PIE) such as QS trading. The chafing gear rule proposes to revise gear requirements for midwater trawlers. The observer and catch monitor rule proposes permitting requirements for observer providers to allow new providers to enter the fishery (potentially reducing observer costs) and revised observer safety requirements. The PIE 2 rule (the second PIE rule since the trawl rationalization program was implemented in 2011, referred to as “PIE 2”) will allow QS trading, remove the ban on QP transfers from December 15 through 31, liberalize the opt-out requirements, reduce the frequency of first receiver site inspections, and remove double filing of coop reports (final rule published in the Federal Register November 15, 2013). This cost recovery rule implements an original program provision that has been delayed since 2011.

In addition to these rulemakings, which are expected to be implemented in 2014, NMFS and the Council are developing the Adaptive Management Program (AMP), an original program provision, and are exploring whether monitoring costs could be decreased through electronic monitoring.

NMFS agrees it is important to implement trailing actions that improve the fleet’s

efficiency and access to target species. In addition to the rulemakings listed above that are already in development, NMFS would like to work with stakeholders through the Council process to develop a comprehensive rulemaking that would improve the fleet's flexibility by addressing gear-related issues (where, when, and with what gear fishermen can fish) and "left-over" regulations from the management structure before the trawl rationalization program that may no longer be necessary. NMFS agrees that this increased flexibility should help the fleet's economic efficiency. NMFS introduced the concept for a "trawl flexibility" rulemaking, which would address these issues, at the Council's June and September 2013 meetings.

NMFS appreciates the comments that cost recovery should be delayed until other trawl trailing actions have been implemented and the fleet is profitable, and NMFS has delayed cost recovery implementation so that additional work on trailing actions could be accomplished. As mentioned above, other trailing actions that will improve the fleet's flexibility and economic efficiency are in development or will be implemented near the start of January 2014. The fleet has benefitted from the delayed implementation of cost recovery since 2011, and NMFS will not be collecting retroactive fees. In addition, while NMFS appreciates that there is always room to improve profitability, the fleet has already started realizing the benefits of the trawl rationalization program. Preliminary data from the mandatory economic data collection program compares data from 2009 and 2010 (pre-trawl rationalization) versus 2011 (post-trawl rationalization) (see Agenda Item F.2 from the Council's June 2013 meeting), and shows that when looking at net revenue, the fleet is still profitable even with increased costs (e.g., high fuel prices, observer costs). However, with only one year of data post-trawl rationalization, it is too early to make conclusions on the economic benefits of the program.

NMFS understands that some in the fleet do not want to accelerate consolidation, which

is an expected outcome of the trawl rationalization program; but at the same time, the program should continue to be implemented as intended. NMFS, the Council, and stakeholders were aware that downsizing, or consolidation, of the fleet was expected and implemented some mitigation measures that could help address that, namely the Adaptive Management Program (AMP), the flexibility to form risk pools, accumulation limits, and a quota share trading moratorium for the first years of program. The AMP has been delayed through 2014 and the quota pounds associated with AMP are being issued to current quota share holders while AMP is in development. Risk pools, where quota share or quota pound holders work together in sharing arrangements, have been forming since the trawl rationalization program started and seem to be effective at mitigating risk, especially for participants that might not be operational alone.

Comment 3. Fishermen are already paying fees to the buyback program, paying state landing taxes, and increasing costs for 100 percent human observer coverage. Adding cost recovery at this time is a burden on the sustainability of some businesses. The industry has been working through a broad 3-state coalition of harvesters and processors to refinance the buyback loan down from the current five percent of the annual gross revenues. While the industry has paid back some of the money borrowed, there is still no end in sight with the industry still owing more than it borrowed. Industry expects that the loan will be refinanced during the 2013 legislative session. Cost recovery should not be implemented before refinancing the buyback loan.

Response. NMFS is aware that fishermen already have costs associated with buyback, state landing taxes, and observer coverage, and understands that adding cost recovery is an additional burden. As described in the response to comment 2, participants in the trawl rationalization program have already started realizing the benefits of the program even with these

costs. In addition, NMFS, the Council, and stakeholders were aware that there would be consolidation of the fleet under the program as the less economically efficient vessels left the fishery. When the program was implemented, predictions were that the fleet would consolidate down from approximately 120 vessels to approximately 60 vessels (Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery final environmental impact statement, June 2010, Table 4-46). The final rule, dated October 1, 2010 (“initial issuance” final rule) (75 FR 60868), which among other things announced approval of the trawl rationalization program and implemented an application processes, acknowledged in response to comment 19 that consolidation was expected and necessary. In approving and implementing the program, NMFS and the Council balanced consolidation to generate benefits of the program with the adverse impacts of consolidation. The response to comment also described many of the measures NMFS and the Council implemented to mitigate for some of the adverse impacts, including an Adaptive Management Program, accumulation limits, and quota share trading moratorium for first years of program.

NMFS acknowledges that while it is a cost to industry, the harvesters that remained and are now in the Shorebased IFQ or MS Coop Programs have benefitted from the buyback program. The industry has also benefitted from cost recovery being delayed for three years since implementation. Cost recovery is required under the MSA. NMFS will implement cost recovery for the trawl rationalization program beginning January 2014. The commenter should also be aware that bills have been introduced to both the House of Representatives and the Senate, titled “Revitalizing the Economy of Fisheries in the Pacific Act,” H.R. 2646 and S.1275 respectively, that would refinance the buyback loan extending the term of the loan and capping the fee rate at three percent of ex-vessel value, down from five percent.

Cost Recovery for Trawl Rationalization by Sector

Comment 4. Several commenters supported calculating and collecting the cost recovery fee on a sector by sector basis as NMFS proposed because of the differential incremental costs to NMFS for each sector.

Response. NMFS calculated the cost recovery fee percentage separately for each sector-Shorebased IFQ Program, MS Coop Program, and C/P Coop Program. NMFS will also collect fees separately for each sector.

Comment 5. Before requiring the C/P Coop Program to pay cost recovery fees, NMFS should provide the legal basis for defining the C/P Coop Program as a LAPP, including why other U.S. sector-based, cooperative management programs are not defined as LAPPs. NMFS should explain why its LAPP guidance document, “The Design and Use of Limited Access Privilege Programs,” describes the C/P sector as not technically a LAPP (p.110).

Response. NMFS and the Council decided that the C/P Coop Program was a LAPP during implementation of Amendment 20, not through this rule. During implementation of the trawl rationalization program through Amendment 20, NMFS described the legal basis for defining the C/P Coop Program as a LAPP. Consistent with the definition of a “limited access privilege” in the MSA (16 U.S.C. 1802 (26)), the C/P Coop Program is a LAPP under the MSA (16 U.S.C. 1853a) because it requires a Federal permit for exclusive use by the coop to harvest a portion of the total allowable catch. In addition, if the coop dissolves, the individual permit owners would be issued IFQ. All three sectors of the trawl rationalization program receive LAPs and gain the benefits of exclusive use of a public resource.

The C/P Coop Program is distinct from other U.S. sector-based, cooperative management programs. When determining whether a program is a LAPP, the unique facts for each program

must be considered. In contrast to the C/P Coop Program, NMFS determined the northeast sector program is not a LAPP because the sectors are not issued a Federal permit that allows them to harvest a portion of the total allowable catch for their exclusive use. NMFS is implementing cost recovery for several fisheries in Alaska and is evaluating whether the American Fisheries Act (AFA) catcher processors are subject to cost recovery.

While not as dramatic of a change as the IFQ or MS sectors, the C/P cooperative changed with implementation of the trawl rationalization program and has benefitted from that change. Now the C/P Coop Program is allocated not only Pacific whiting, but also key bycatch species; providing dedicated access to a public resource and more protection from being closed by harvest in other sectors. Under the new program, a C/P coop permit is required for this sector to operate as a coop. If the coop dissolves, each individual limited entry, C/P-endorsed permit owner would be allocated quota share under an IFQ program, creating an incentive to maintain the coop. The C/P Coop Program now has C/P endorsements on limited entry permits, providing a closed number of participants access to a public resource and allowing them protections to develop their own coop. The C/P Coop Program provides flexibility regarding when participants in the sector can fish their allocation. The C/P Coop Program now includes other provisions that enhance management, data, and enforcement of the program, such as a mandatory economic data collection, mandatory observer program with collection of estimates of operational or other discards, coop agreements, and annual coop reports.

NMFS acknowledges that generally the C/P Coop Program management costs are less than those of the other sectors. The decision to implement cost recovery on a sector by sector basis, where the costs of managing the C/P sector are calculated separately from other sectors, addresses this issue.

NMFS also clarifies for the commenter that NMFS' LAPP technical memorandum titled, "The Design and Use of Limited Access Privilege Programs," was published in 2007, before implementation of the trawl rationalization program, and describes the C/P cooperative as it existed before it was a LAPP under the trawl rationalization program.

Fee Percentage Calculation, including Incremental Costs

Comment 6. In evaluating whether there should be a common fee or a fee that varies by sector, the commenter requested that further analyses be conducted before NMFS implements a cost recovery program that will no doubt eliminate many small boats that help stabilize coastal communities. A fee schedule comparative analysis should be conducted based on: 1) the volume of harvest by sector; 2) the value of harvest by sector; 3) number of communities that are benefited by sector; and 4) the benefit received by the sector because of the program.

Response. NMFS recognizes that there may be different impacts of cost recovery on businesses. The classification section of the proposed rule preamble provided a summary of the IRFA (see ADDRESSES). The summary discusses the economic impact of the proposed action, including impacts on small versus large businesses, and acknowledges that, "While the cost recovery fees may be affordable for the average fisherman, for other fishermen the cost recovery fee may not be affordable given the other costs they incur. Many fishermen, particularly shorebased fishermen, have voiced concerns that paying for costs of state landing taxes, the buyback fees, the costs of observers, and cost recovery fees will be challenging." The summary also noted that most of the Shorebased IFQ Program participants and catcher vessels in the MS Coop Program are small businesses, while most of the at-sea processors in the MS and C/P Coop Programs are large businesses. The classification section of this final rule includes a summary of the FRFA.

While there may be different impacts of cost recovery on small versus large businesses, the cost recovery provisions of the MSA (16 U.S.C. 1854(d)(2)(B)) do not differentiate between the fee percentage that must be charged for small versus large businesses. Fees are calculated on the costs of management, data collection, and enforcement for each sector of the trawl rationalization program and must not exceed three percent of the ex-vessel value of fish harvested in that sector.

NMFS did not draft a fee schedule comparative analysis requested by the commenter because much of the information is already publicly available. An estimate of the ex-vessel value of harvest by sector was provided in the summary of the initial regulatory flexibility analysis in the classification section of the proposed rule preamble and is again summarized in the classification section of this final rule. For the Shorebased IFQ Program, information on the volume and value of harvest by sector, port, and gear type is available in the Annual Catch Report for the Pacific Coast Groundfish, Shorebased IFQ Program posted on NMFS website at http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish_catch_shares/ifq_analytical_documents.html. At the June 2013 Council meeting, NMFS released a draft report on the economic data collection program for all sectors of the trawl rationalization program (IFQ, MS, and C/P), which covers pre-trawl rationalization years 2009 and 2010, and the first year post-trawl rationalization, 2011. While this report is still in draft form, it includes industry-reported information on volume and value of harvest by sector, port, and gear type. It also provides insight to the benefits received by sector because of the program. However, with only one year of data post-trawl rationalization, it is too early to make conclusions on the economic benefits of the program.

Also, as discussed in the Amendment 20 Environmental Impact Statement and Record of

Decision, providing for a profitable groundfish fishery and minimizing adverse economic impacts on communities were some of the objectives guiding development of the trawl rationalization program. During the development of Amendment 20, NMFS considered the impacts of the program on communities in detail and minimized adverse economic impacts to the extent practicable. NMFS implemented mechanisms to address concerns about communities, including an Adaptive Management Program, a moratorium on QS transfers for the first years of the program, accumulation limits, and a five-year review.

Comment 7. Some commenters said that NMFS should implement the Council's recommendation to cap the fee percentage at one percent for C/P, two percent for MS, and three percent for IFQ rather than using a formula ($DPC/V \times 100$) to determine the actual fee percentage by sector up to the MSA three percent cap. A commenter noted that the MSA (section 303A(e)) provides authority to the Council to develop a cost recovery program, but does not provide discretion to NMFS to change the Council action. Another commenter said the Council's recommendation of one percent for C/P, two percent for MS, and three percent for IFQ was arbitrarily derived based on the number of boats in a sector (i.e., more boats must equal more costs). The Council did not analyze other options, except for whether the fee percentage should be calculated and paid based on all sectors combined or by each sector individually (IFQ, MS, and C/P). One commenter said the proposed rule states that for the first year the cost recovery fee percentage would be limited to one percent for the C/P sector, but then up to the MSA maximum of three percent thereafter without providing any justification for why the interim period ends after the first year of cost recovery. Other commenters requested that NMFS clarify what it intends to do.

Response. The proposed rule preamble explained NMFS' proposed approach to the fee

percentage calculation (78 FR 7371, p.7375). NMFS calculated the actual fee percentage by sector between the proposed and final rule using the best available information and following the process explained in the preamble to the final rule at “Fee Percentage by Sector for 2014.”

NMFS considered the Council’s September 2011 recommendation to cap the fee percentage at two percent for the MS Coop Program and one percent for the C/P Coop Program. However, NMFS decided that the two percent and one percent caps were not consistent with the MSA, which requires that the Secretary of Commerce collect fees to “recover the actual costs directly related to the management, data collection, and enforcement” of any LAPP, (16 U.S.C. 1854(d)(2)), but caps the fee at three percent of the ex-vessel value. Under the MSA, the Council’s role in cost recovery is to “(1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and (2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.” (16 U.S.C. § 1853a(e)). In other words, the Council develops the cost recovery program and its methodology (e.g. calculate fee by sector, coordinate with the buyback program, etc.), but NMFS has the authority, and the requirement, to recover actual costs up to the three percent cap.

Comment 8. The alternate approach of calculating the cost recovery fee for the C/P Coop Program described by NMFS in the proposed rule is not specific enough to determine how it would function and how it would be more cost effective. NMFS should meet with participants in the C/P Coop Program to discuss both approaches.

Response. In the preamble to the proposed rule (78 FR 7371, p.7376) under the section titled “Fee Payment and Collection,” NMFS described two methods of calculating the cost

recovery fee amount for the C/P Coop Program. One is similar to the other sectors (IFQ and MS), in that the fee amount is calculated by multiplying the ex-vessel value by a percentage. This was the method of calculation that NMFS proposed. In the alternate approach, the fee amount would have been calculated by determining NMFS' costs from the previous fiscal year and directly billing the C/P sector (as long as the amount was below the three percent cap). To clarify for the commenter, the alternate approach of direct billing was not expected to be more cost effective, but rather was expected to result in fewer adjustments for over and under charges between years. Because NMFS did not get public comment supporting the alternate approach, NMFS is implementing the method as described in the proposed rule and in § 660.115(d)(2) of this final rule. This issue is also mentioned under the section of the preamble titled "Items NMFS Requested Comment on in the Proposed Rule."

Comment 9. The cost recovery fee should be based on fish sold by a harvester to a fish buyer, not on how much fish is harvested. NMFS does not need to rely on discard estimates and 100 percent observer coverage in order to determine the volume of groundfish for cost recovery fee collection.

Response. NMFS agrees that the fee amount should be based on the value of fish sold by a harvester and not on discards. The regulations in both the proposed and final rule reflect that. The fee amount due to NMFS is a percentage of the ex-vessel value (as specified at § 660.115(c) and reflected on the cost recovery form). Ex-vessel value is defined at § 660.111 for each sector (IFQ, MS, and C/P) and includes the value of fish harvested. Where NMFS relies on information from observer coverage is for the at-sea sectors (MS and C/P), for NMFS to verify that appropriate cost recovery fees are paid.

For the Shorebased IFQ Program, fish are harvested and retained catch is delivered to

shorebased facilities and documented on an electronic fish ticket. The weight and ex-vessel value of the harvested and retained catch is documented on the electronic fish ticket. NMFS can use the electronic fish ticket to verify that the cost recovery fees paid are appropriate. For the at-sea sectors, fish are not documented on electronic fish tickets. Fish are harvested and retained catch is processed at sea. Observers collect data to determine species composition and to estimate retained and discarded catch by species. The observer data can be effectively used by NMFS to verify the cost recovery fees paid are appropriate by reviewing the observer data on retained catch.

Comment 10. For NMFS to be transparent, before the fee percentages are set for the year, NMFS should provide the Council and industry representatives a chance to review. The Council should have an opportunity to ask questions, request more data, request clarification, and resolve any questions to the Council's satisfaction. NMFS detailed accounting should be made public with time for public review to verify recoverable costs. In 2011, NMFS provided a general budget of costs, but has not yet provided detailed information on its pre and post trawl rationalization program costs, including what constitutes incremental costs. NMFS should provide line items by category. For example, not lump sums for salaries and benefits, but salaries broken down and to what category of employee they are assigned. Another commenter noted that to determine recoverable costs, NMFS should provide a detailed comparison of trawl fishery management costs prior to 2004 and at the present time. If there is approximately \$2.5 million per year in incremental costs as stated in the proposed rule, then there should be at least 20 more employees now who spend 100 percent of their time on catch shares and do not duplicate any of the work being done by employees prior to 2004. Providing an annual report after the fact is not adequate.

Response. NMFS will continue to be transparent in implementation of cost recovery. As described further in the preamble under “Fee Percentage by Sector for 2014,” NMFS is including only the cost of NMFS employees’ time for work on the trawl rationalization program in the calculation of the fee percentage for 2014. These are costs that would not have been incurred but for the trawl rationalization program. NMFS will publish further details on the fee percentage calculation for 2014 in the annual report. The annual report is expected to be published in the spring each year. However, for initial implementation of cost recovery, NMFS will publish an annual report in the fall of 2013.

NMFS is only including the cost of employees’ time in the calculation for 2014 because of NMFS’ limited resources and time to determine the additional incremental costs. After January 2014, and once cost recovery is implemented, NMFS would like to work with the Council to identify additional incremental costs to be used in the fee percentage calculation in future years. As described in the preamble to the proposed rule (78 FR 7371, p.7375), the Council’s Cost Recovery Committee (CRC) is tasked with assisting NMFS to identify specific incremental costs on a sector-by-sector basis, and to identify any opportunities for long-term cost efficiencies within the program. The Council recommended using Appendix B of the CRC Report from the September 2011 Council meeting (Agenda Item G.6.b) as guidance in calculating incremental costs associated with the program. The Council emphasized the need for transparency within cost accounting procedures, and ensuring that the Council has an ongoing, periodic role in reviewing fee percentages. NMFS is committed to transparent cost accounting practices and would like to work with the Council to identify incremental costs that are in addition to the cost of employees’ time spent on management, data collection, and enforcement of the program.

Notification of the Fee Percentage and MS Pricing

Comment 11. NMFS proposed to notify the public of the upcoming year's fee percentage through publication of a Federal Register notice. In addition, NMFS should directly notify those fish buyers who will be responsible for collecting fees to ensure proper fees are collected and avoid additional collection costs.

Response. NMFS will not directly mail notification of the fee percentage changes to fish buyers. NMFS has moved away from paper mailing where possible to save money and resources and, instead, provides electronic notification. In addition to publishing a Federal Register notice in the last quarter of the calendar year to announce the upcoming year's fee percentage, NMFS will notify fish buyers and the general public of the fee percentage through a public notice emailed to the groundfish email list and posted on NMFS' website. The fee percentage will also be automatically updated on the cost recovery form that is filled out on Pay.gov with fee payments. Public notices are posted on the following website along with information on how to join the groundfish email list to receive public notices via email:

http://www.westcoast.fisheries.noaa.gov/publications/fishery_management/groundfish/public_notices/recent_public_notices.html. Federal Register documents are posted on NMFS website at: http://www.westcoast.fisheries.noaa.gov/publications/frn/groundfish_frns.html.

Fee payment and Collection

Comment 12. Several commenters support NMFS coordinating the fee payment structure for cost recovery with the groundfish buyback loan to reduce the burden on fish buyers as fee collectors. Some commenters noted that NMFS should use separate forms with payment of buyback fees versus cost recovery fees because they are different programs. NMFS should keep the online reporting as simple and straight-forward as possible given the disparity of online

capabilities of fish buyers and that not all have access to high speed internet. NMFS should revise the buyback regulations to provide an online reporting option for fish buyers collecting buyback fees.

Response. NMFS will use separate forms for buyback versus cost recovery. In addition, NMFS will use separate cost recovery forms for each sector (IFQ, MS, C/P). During implementation of cost recovery and its corresponding Pay.gov application, NMFS became more aware of the accounting and reconciliation procedures within the agency. As part of that, and in order to maintain good accounting practices, NMFS has decided to use separate forms for payment of buyback versus cost recovery. Similarly, because cost recovery fees are charged for each sector of the fishery, and in order to keep payment, tracking, and accounting for each sector distinct, NMFS has created a separate cost recovery form for each sector. One form would be submitted with each payment and a fish buyer may only make payments for one sector's fees at a time. In order to reduce the burden of these additional forms on the public, NMFS has made the cost recovery forms similar in structure and format to the buyback forms. In addition, once the fish buyer establishes an online account with Pay.gov, certain fields on the form, such as name and address, will auto-populate. Also, links to buyback and cost recovery forms will be available on Pay.gov and through the West Coast Region trawl catch share website.

NMFS has designed the online fee payment system to be similar to buyback, and to be as simple and straight-forward as possible, while maintaining clear tracking and accounting of fees paid. Finally, NMFS would like to clarify for the commenter that the buyback program does provide for online reporting and payment of buyback fees.

This issue is also mentioned under the section of the preamble titled "Items NMFS Requested Comment on in the Proposed Rule."

Comment 13. Instead of requiring fish buyers to have a separate bank account for cost recovery and buyback, fish buyers should have the option to use the same federally insured bank account for both buyback and cost recovery, as long as all records are clearly kept as required by regulation. This would be simpler for fish buyers, would still be subject to audit, and is enforceable because of the recordkeeping requirements.

Response. With this final rule, NMFS is maintaining the requirement for fish buyers in the IFQ and MS sectors to have a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue for cost recovery, called a “deposit account” in regulation at § 660.115(d)(1)(ii). Fish buyers in the C/P sector are not required to have segregated accounts because the fish seller and the fish buyer is always the same entity, and they only make one payment to NMFS per year. NMFS believes this requirement ensures clear accounting. In addition, the buyback regulations (§ 600.1014(a)) require a segregated account for the collection of buyback fees, which means the cost recovery fees could not be kept in a buyback account without changing the buyback regulations. The buyback regulations apply to other U.S. fisheries than just the Pacific coast groundfish fisheries. This final rule is not revising the national buyback regulations. However, if the buyback regulations are revised through a future rulemaking, the possibility of a joint buyback and cost recovery deposit account could be explored and, if adopted, would need to include a revision to the Pacific coast groundfish regulations.

Comment 14. NMFS should clarify how the prohibition at § 660.112(a)(6)(iii) applies to the C/P Coop Program. The C/P Coop Program neither collects nor disburses cost recovery fees from fish sellers.

Response. With this final rule, NMFS clarifies the prohibition at § 660.112(a)(6)(iii) to

only apply to the Shorebased IFQ and MS Coop Programs, and not to C/P Coop Program. Because vessels in the C/P Coop Program act as both the harvester and the processor, they are not required to collect fees from themselves, keep a segregated bank account, and then disburse payments to NMFS from the segregated bank account. The C/P Coop Program would still be required to make timely fee payments to NMFS and subject to the other prohibitions in § 660.112(a)(6). This issue is also mentioned under the section of the preamble titled “Changes from the Proposed Rule.”

Recordkeeping, Reporting, and Auditing

Comment 15. NMFS should not require an annual cost recovery report from the C/P cooperative participants for the reasons listed in the preamble to the proposed rule (78 FR 7371, February 1, 2013): the fish buyer and fish seller are the same entity, only pay at end of year, are not be required to have a deposit account, and are not paying the fee amount based on their own ex-vessel value (they pay based on MS ex-vessel value). The public reporting burden for an annual report from fish buyers in the C/P Coop Program is unreasonable and unnecessary.

Response. NMFS agrees and with this final rule has removed the requirement for an annual report in the C/P Coop Program at § 660.113(d)(5)(i) and at § 660.115(d)(4)(ii). This issue is described in more detail under the section of the preamble titled “Items NMFS Requested Comment on in the Proposed Rule,” and is mentioned under the section of the preamble titled “Changes from the Proposed Rule.”

Comment 16. NMFS should clarify how the reporting and recordkeeping requirements regarding ex-vessel value and the collection of fees proposed at § 660.113(d)(5)(i) and (ii) apply to the C/P Coop Program.

Response. NMFS requires fish buyers to submit a cost recovery form with the fish

buyer's fee payment to NMFS. The cost recovery form requires certain information to be completed by the fish buyer, including the ex-vessel value and the fee collected, as specified at § 660.113(d)(5)(i). The ex-vessel value is defined at § 660.111. For the C/P Coop Program, the ex-vessel value reported on the cost recovery form should be the value of the aggregate pounds of all groundfish species harvested by the vessel registered to a C/P-endorsed limited entry trawl permit, multiplied by the MS Coop Program average price per pound. The field on the cost recovery form to record the fee collected is the fee due to NMFS. The amount of fee due to NMFS is determined by multiplying the amount in the ex-vessel value field by the applicable fee percent. In addition to reporting the ex-vessel value and the fee collected on the cost recovery form, the fish buyer is required to maintain their own records of these items, as specified at § 660.113(d)(5)(ii).

NMFS revised the term "fee collected" on the cost recovery form and in the records maintained by fish buyers to read "fee due" to NMFS. NMFS revised the term to reduce confusion and distinguish between the fee collected by fish buyers from fish sellers versus the fee due to NMFS from fish buyers. With this final rule, regulations at § 660.113(b)(5)(i), (c)(5)(i), and (d)(5)(i) have been revised from "fee collected" to "fee due." This issue is also mentioned under the section of the preamble titled "Changes from the Proposed Rule."

Comment 17. Participants in the C/P Coop Program should be exempt from the audit provisions proposed at § 660.115(d)(4)(iii). Provisions to ensure accurate accounting and reporting of transactions between buyers and sellers do not apply to C/P cooperative participants.

Response. NMFS disagrees that the C/P Coop Program should be exempt from the audit provisions at § 660.115(d)(4)(iii). Any fish buyer or fish seller in the trawl rationalization program required to directly or indirectly pay fees to the Federal government may be subject to

an audit to ensure compliance with cost recovery.

Failure to Pay

Comment 18. NMFS should use the same penalty structure for cost recovery as is required for buyback. NMFS' proposed penalty to not renew a mothership permit if payment is not received by the deadline is too harsh.

Response. This issue was discussed at the Council's June and September 2011 meetings, and the Council made a final recommendation to NMFS to include non-renewal of a permit for failure to pay cost recovery fees. At the Council's June 2011 meeting, the Council asked that options for ensuring payment be analyzed, and that NMFS indicate a preferred option and rationale (in reference to Question 4 in the June 2011 Agenda Item E.7.b Supplemental NMFS Report 2 on what type of linkage should exist between payment of the cost recovery fee and permitting requirements). At the September 2011 meeting, the Council reviewed Agenda Item G.6.b, Supplemental NMFS Report 2, which analyzed the pros and cons of different approaches and noted NMFS preferred option. NMFS' preferred option, Option 4, linked failure to pay the assessed cost recovery fee to permit or IFQ first receiver site license renewal, but did not require proof of fee payment as part of a complete renewal application. With this approach, the primary compliance incentive is an administrative link between failure to pay the appropriate cost recovery fee and permit/license renewal. Potential enforcement action would remain an option in some cases. This rule incorporates a permit link to ensure compliance while minimizing the associated administrative burden to both NMFS and industry. The way the Council had already recommended structuring the cost recovery program would create incentives that lead to a high compliance rate. However, success of the trawl rationalization program is tied to successful cost recovery. Due to the reasons listed above, reliance on enforcement actions alone would likely not

provide sufficient compliance incentives. Additionally, NMFS noted that including a permit link was most consistent with NMFS policy on permits issuance under the Debt Collection Improvement Act. Ultimately, the Council recommended Option 4 from Agenda Item G.6.b, Supplemental NMFS Report 2, September 2011. The Council's advisory bodies, including the Groundfish Advisory Subpanel and the Enforcement Consultants, supported this recommendation for effective implementation and enforcement of cost recovery. With this final rule, NMFS has implemented the Council's recommendation to include a permit linkage for failure to pay.

Items NMFS Requested Comment on in the Proposed Rule

NMFS specifically requested comment on several items in the proposed rule. Below, NMFS identifies each issue where NMFS specifically requested public comments, and indicates whether comments were received. In instances where NMFS made changes to the proposed rule, NMFS identified these changes in the section titled "Changes from the Proposed Rule."

- Coordinating Cost Recovery with Buyback

In the proposed rule, NMFS specifically requested comment on using one form to submit two payments, one payment to each program (cost recovery and buyback). However, NMFS proposed a separate cost recovery form, in part because NMFS found several drawbacks to using one combined form for both programs. The drawbacks to one combined form for both programs included the potential for increased misreporting/mispayment, different consequences for misreporting/mispayment (late fee versus nonrenewal of permit/license), and increased time to correct errors, potentially harming business operations.

In an effort to further coordinate the cost recovery program with the buyback program, NMFS will use the same online portal for payment as the buyback program, Pay.gov. By using

the same portal, users are able to go to one place to make payments, maintain a user profile, and click on a link to pay either buyback fees or cost recovery fees. The forms submitted with payment for each fee are contained in each link. The cost recovery form on the Pay.gov link has been designed to look very similar to the buyback form, with the addition of a box to fill out the weight (in lbs) and fees paid based on the cost recovery program fee percentage (which is different than the buyback fee percentage). In addition, certain fields on the form will auto-populate for users with existing Pay.gov accounts. With this system, NMFS expects that the ex-vessel value reported on the cost recovery form should match that reported on the buyback form, because both forms report based on the value of all groundfish species. NMFS solicited public comment on the benefits and drawbacks of one form versus two, and received comments (see Comment 12 in the “Comments and Responses” section). After considering the comments, NMFS will use separate forms for cost recovery and buyback. While no regulatory changes were made from the proposed rule, NMFS decided to split the cost recovery form in to one for each sector (IFQ, MS, and C/P) as described further in the response to comment 12.

- Fee Amount; Fee Payment and Collection

In the proposed rule, NMFS specifically requested comment on an alternate approach to calculating the cost recovery fee amount for the C/P Coop Program. Instead of multiplying the ex-vessel value (using MS pricing) by the fee percentage to get the fee amount, NMFS could have directly billed the sector in the last quarter of the year so long as the value for DPC of the C/P Coop Program in the fee percentage calculation for the previous fiscal year was an amount equal to or less than three percent of the ex-vessel value of the fishery (using MS pricing). Under this alternate approach, NMFS would have calculated the fee percentage using information from the previous fiscal year in order to ensure that the fee did not exceed three

percent. NMFS would have also announced the amount due from the C/P Coop Program in the fall before the fishing year in which the fee amount would have been applied. This way, the C/P Coop Program would have known at the start of the fishing year how much money would be due to NMFS for cost recovery at the end of the year. Under this alternate approach, the C/P Coop would have been responsible for figuring out which “fish buyers,” as defined for the cost recovery program, were responsible for which portion of the payment and for notifying NMFS. NMFS would have then billed each fish buyer accordingly. This alternate approach would have resulted in more accurate payment and less adjustments for over or under payment between years. NMFS received comments on this proposal (see Comment 8 in the “Comments and Responses” section), and made no changes from the proposed rule.

- Recordkeeping, Reporting, and Auditing

In the proposed rule, NMFS specifically requested comment on additional reporting requirements for the at-sea whiting sectors (MS and C/P) to verify information reported on the cost recovery form. In order to hold the three sectors (IFQ, MS, and C/P) to similar standards and to ensure fair and accurate fee payment among the sectors, NMFS proposed an annual report for both of the at-sea sectors. However, there are some distinctions between the at-sea sectors (MS and C/P). Because in the C/P Coop Program the fish buyer and fish seller are the same entity, because they would only pay at end of year, because they would not be required to have a deposit account, and because they are not paying the fee amount based on their own ex-vessel value (they pay based on MS ex-vessel value), NMFS solicited public comment on the need for an annual report in the C/P Coop Program. Comments were received (see Comment 15 in the “Comments and Responses” section), and this rule changes the requirements at § 660.113(d)(5)(i) and at § 660.115(d)(4)(ii) to remove the requirement for an annual report from

fish buyers in the C/P Coop Program. See also “Changes from the Proposed Rule.”

Changes from the Proposed Rule

In this final rule, NMFS has made several small changes from the proposed rule. NMFS revised the definition of “ex-vessel value” at § 660.111 to say “...or for any goods or services...” instead of “or for any goods for services.” NMFS clarified the prohibition at § 660.112(a)(6)(iii) on deposit accounts and fee collection to only apply to the Shorebased IFQ and MS Coop Programs, and not to C/P Coop Program-- see response to Comment 14. NMFS revised § 660.115(d)(3)(i)(A)(4) by adding “failing or” to the following phrase “failing or refusing to collect” to clarify the conditions of the requirement. NMFS revised the name of the Regional Office from “Northwest” to “West Coast” at § 660.115(d)(3)(i)(B) and (d)(3)(ii)(B) to reflect the new regional name following the merger of NMFS Northwest and Southwest Regional Offices. NMFS removed the requirement for an annual report from fish buyers in the C/P Coop Program at § 660.113(d)(5)(i) and at § 660.115(d)(4)(ii) – see response to Comment 15. NMFS revised the term “fee collected” to “fee due” on the cost recovery form and in regulations at § 660.113(b)(5)(i), (c)(5)(i), and (d)(5)(i) – see response to Comment 16. NMFS also revised § 660.113(b)(5)(i), (c)(5)(i), and (d)(5)(i) to clarify terms (using “fish buyer” which is defined at § 660.111 instead of “fee collector”) and make them more specific to each sector (e.g., reporting only the year of harvest for C/P versus month and year of landings/deliveries for IFQ and MS).

NMFS revised regulations at § 660.115(b)(1)(ii) to calculate ex-vessel value based on the previous calendar year rather than fiscal year. Ex-vessel value for the Shorebased IFQ Program is reported in PacFIN from fish ticket data. PacFIN groups data and reports by calendar year. In addition, PacFIN reports may have a time delay. Therefore, pulling accurate data based on a fiscal year, right after the fiscal year has closed, may not be possible.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the MSA, and other applicable law. To the extent that the regulations in this final rule differ from what was deemed by the Council, NMFS invokes its independent authority under 16 U.S.C. 1855(d).

The Council prepared a final environmental impact statement (EIS) for Amendment 20 and Amendment 21 to the Pacific Coast Groundfish FMP. The Amendment 20 and 21 EISs are available on the Council's website at <http://www.pcouncil.org/>. The regulatory changes in this rule were categorically excluded from the requirement to prepare a NEPA analysis.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The preamble to the proposed rule (78 FR 7371, February 1, 2013) included a detailed summary of the analyses contained in the IRFA. NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared a FRFA in support of this final rule. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. A copy of the FRFA is available from NMFS (see ADDRESSES) and a summary of the FRFA, per the requirements of 5 U.S.C. 604(a), follows:

This rulemaking affects participants in the trawl rationalization program. Cost recovery for the trawl rationalization program requires the fish sellers to pay the fee and all parties making the first ex-vessel purchase of groundfish (i.e., the fish buyers) to collect the fee, account for, and forward the fee revenue to NMFS (Note: In the C/P Coop Program, a cooperative of vessels that both harvest and process whiting at-sea, the fish seller and the fish buyer are the same entity).

Each vessel account holder, mothership catcher vessel, mothership processor, and catcher-processor must apply to participate in the trawl rationalization program. There are 144 vessel accounts, 36 mothership-endorsed limited entry permits, 6 mothership permits, 10 catcher-processor permits, and 51 first receiver site licenses. In many instances, one entity may own several permits or accounts. As part of the application process, applicants were asked if they considered themselves a “small” business based on a review of the Small Business Administration (SBA) size criteria.

On June 20, 2013, the SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398; June 20, 2013). This change affects the classification of vessels that harvest groundfish under this program. The rule increased the size standard for Finfish Fishing from \$4.0 to 19.0 million, Shellfish Fishing from \$4.0 to 5.0 million, and Other Marine Fishing from \$4.0 to 7.0 million (Id. at 37400-Table 1). Prior to SBA's recent changes to the size standards for commercial harvesters, a business involved in both the harvesting and processing of seafood products, also referred to as a catcher/processor (C/P), was considered a small business if it met the \$4.0 million criterion for commercial fish harvesting operations. In light of the new size standards for commercial harvesters, NMFS is reviewing the size standard for C/Ps. However, for purposes of this rulemaking, NMFS is applying the \$19 million standard because whiting C/Ps are involved in the commercial harvest of finfish. The size standards for entities that process were not changed. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide.

Based on the new finfish size standard (\$19 million), NMFS reassessed those businesses

previously considered large under the old size standard (\$4 million) based on information provided by these companies under the NMFS Northwest Fisheries Science Center's Economic Data Collection Program. This reassessment also included adjustments for entities that own multiple accounts and or permits. Based on the new size standard (\$19 million) and after taking into account NWFSC economic data, NMFS permit and ownership information, and affiliation between entities, NMFS estimates that there are 145 fishery-related entities directly affected by these regulations, of which 102 are "small" businesses.

Using the fee rate by sector for 2014 and 2012 calendar year revenues, for the Shorebased IFQ Program, would lead to the following projected collections: Shorebased IFQ Program, \$1.44 million (\$48 million x 0.030); MS Coop Program, approximately \$264,000 ((\$11 million x 0.024); and for the C/P Coop Program, approximately \$187,000 ((\$17 million x 0.011). Using this example, NMFS would recover approximately \$1.9 million by implementing cost recovery.

Overall, as discussed above NMFS received 11 public comments on the groundfish trawl rationalization cost recovery proposed rule. No significant issues were raised by the public comments in response to the IRFA. However, Comment 6 above does raise "small boat" issues. The comment period ended March 18, 2013.

Generally, the comments acknowledged the MSA requirement for cost recovery. Many commenters requested that implementation be delayed to January 1, 2014 at the earliest. Some of these commenters noted that mid-year implementation would unfairly disadvantage fishermen who fish later in the year. Other commenters requested that it be delayed until the trawl rationalization fishery has gained more economic stability, namely after the buyback loan has been refinanced, NMFS identifies and shares a detailed budget of incremental costs, and trawl trailing amendments have been implemented (e.g., electronic monitoring, more flexibility in

where and with what gear fishermen can fish, widow rockfish reallocation, etc). Some commenters felt NMFS should prioritize these trailing actions that would benefit the program and the fleet before implementing cost recovery. These trailing actions would make the fleet more profitable and thus, better able to afford the cost recovery fee.

The impacts on both small and large entities are the fees being collected - up to three percent of ex-vessel revenues or the mothership and catch processor equivalents. As discussed in the proposed rule (78 FR 7371, February 1, 2013), fishermen have been paying state landing taxes for years. The buyback fees, on the other hand, are associated with a reduction of the fleet that has significantly increased the amount of fish that the post buyback fishermen were able to harvest under the trip limit regime (prior to trawl rationalization) or received as QS that fishermen now receive under trawl rationalization. (Buyback history was equally divided among all shorebased groundfish permits.) Fishermen are now petitioning Congress for a reduction in the interest rate associated with the \$36 million buyback loan. While the costs of observers may be high, NMFS and the Council are looking at the feasibility of electronic monitoring to lower administrative and fishermen costs. The costs of paying the cost recovery fees can be reduced by developing a lower cost administrative system or by increased revenues as fishermen develop techniques to reduce bycatch so they can increase their target catch. The effects of all factors on current and future individual and industry profits are hard to assess, particularly as QS trading is not allowed until 2014. When QS trading is initiated, it is expected that the number of participants in the Shorebased IFQ Program will be reduced. A reduction in the number of participants may lower administrative costs while raising average revenues per participant.

Because cost recovery is mandatory under the MSA, the “no action” alternative is not a viable alternative. All of the other alternatives would have the same expected effects among

each other because the MSA requires fees of up to three percent of the ex-vessel value to be collected. Implementation costs were reduced by adapting the existing buyback fee collection processes and by adjusting these processes to each sector.

While there may be different impacts of cost recovery on small and large businesses, the cost recovery provisions of the MSA (16 U.S.C. 1854(d)(2)(B)) do not differentiate between the fee percentage charged for small versus large businesses. Cost recovery was originally approved as part of Amendment 20, and is required under the MSA for LAPPs like the trawl rationalization program. NMFS delayed implementation of cost recovery for the first three years of the trawl rationalization program. In response to public comments, NMFS decided to continue the delay until January 2014.

No Federal rules have been identified that duplicate, overlap, or conflict with the alternatives. Public comment is hereby solicited, identifying such rules.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the West Coast Regional Office, and the guide will be sent to all permit owners and first receiver license holders for the fishery. The guide and this final rule will also be available on the West Coast Region’s website (see ADDRESSES) and upon request.

This final rule contains a collection-of-information requirement subject to the Paperwork

Reduction Act (PRA), and which has been approved by OMB under control number 0648-0663. NMFS received three letters of comment on the proposed rule regarding this information collection. In the “Comments and Responses” section of the preamble, comments 12 through 16 address aspects of the information collection. The comments generally sought to reduce the burden on fish buyers as collection agents, keep online reporting simple, use separate forms for cost recovery and buyback, not require a segregated bank account, not require an annual report for the C/P Coop Program, and clarify the ex-vessel value and fee due on the cost recovery form for the C/P Coop Program. Based on these comments on the information collection, NMFS made several changes between the proposed and final rule, as noted in the preamble section “Changes from the Proposed Rule.” Public reporting burden for the cost recovery form is estimated to average 1 hour per response. Public reporting burden for a failure to pay report is estimated to average 4 hours per response. Public reporting burden for the annual report for the MS Coop Program is estimated to average 1 hour per response. These public reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on these or any other aspects of the collection of information, including suggestions for reducing the burden, to NMFS, West Coast Region at the ADDRESSES above, and e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This final rule was developed after meaningful collaboration, through the Council

process, with the tribal representative on the Council. The regulations have no direct effect on the tribes; these regulations were deemed by the Council as “necessary or appropriate” to implement the FMP as amended.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: December 6, 2013.

Alan D. Risenhoover, Director, Office of Sustainable Fisheries,
performing the functions and duties of the Deputy Assistant Administrator
for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR Chapter VI is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq., 16 U.S.C. 773 et seq., and 16 U.S.C. 7001 et seq.

2. In § 660.11, add the definition for “Fiscal year” and “Fund” in alphabetical order to read as follows:

§ 660.11 General definitions.

* * * * *

Fiscal year means the year beginning at 0001 local time on October 1 and ending at 2400 local time on September 30 of the following year.

* * * * *

Fund means, for the purposes of subparts C through G of this part, the U.S. Treasury's Limited Access System Administration Fund (LASAF) established by the Magnuson-Stevens Act, 16 U.S.C. 1855(h)(5)(B), specifically the LASAF subaccounts associated with the PCGFMP cost recovery programs.

* * * * *

3. In § 660.25, as added at 78 FR 68767, November 15, 2013, effective January 1, 2014, is revised to read as follows:

§ 660.25 Permits.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(G) An MS permit or a limited entry permit with a C/P endorsement will not be renewed, if it was the permit owner that failed to pay, until payment of all cost recovery program fees required pursuant to § 660.115 has been made. The IAD, appeals, and final decision process for the cost recovery program is specified at § 660.115(d)(3)(ii).

* * * * *

4. In § 660.111, add the definition for “Ex-vessel value,” “fish buyer,” “Fish seller,” and “Net ex-vessel value” in alphabetical order to read as follows:

§ 660.111 Trawl fishery – definitions.

* * * * *

Ex-vessel value means, for the purposes of the cost recovery program specified at § 660.115, all compensation (based on an arm's length transaction between a buyer and seller) that a fish buyer pays to a fish seller in exchange for groundfish species (as defined in § 660.11), and includes the value of all in-kind compensation and all other goods or services exchanged in lieu of cash. Ex-vessel value shall be determined before any deductions are made for transferred or leased allocation, or for any goods or services.

(1) For the Shorebased IFQ Program, the value of all groundfish species (as defined in § 660.11) from IFQ landings.

(2) For the MS Coop Program, the value of all groundfish species (as defined in § 660.11) delivered by a catcher vessel to an MS-permitted vessel.

(3) For the C/P Coop Program, the value as determined by the aggregate pounds of all groundfish species (as defined in § 660.11) harvested by the vessel registered to a C/P-endorsed limited entry trawl permit, multiplied by the MS Coop Program average price per pound as announced pursuant to § 660.115(b)(2).

Fish buyer means, for the purposes of the cost recovery program specified at § 660.115,

(1) For the Shorebased IFQ Program, the IFQ first receiver as defined in § 660.111.

(2) For the MS Coop Program, the owner of a vessel registered to an MS permit, the operator of a vessel registered to an MS permit, and the owner of the MS permit registered to that vessel. All three parties shall be jointly and severally responsible for fulfilling the obligations of a fish buyer.

(3) For the C/P Coop Program, the owner of a vessel registered to a C/P-endorsed limited entry trawl permit, the operator of a vessel registered to a C/P-endorsed limited entry trawl

permit, and the owner of the C/P-endorsed limited entry trawl permit registered to that vessel.

All three parties shall be jointly and severally responsible for fulfilling the obligations of a fish buyer.

Fish seller means the party who harvests and first sells or otherwise delivers groundfish species (as defined in § 660.11) to a fish buyer.

* * * * *

Net ex-vessel value means, for the purposes of the cost recovery program specified at § 660.115, the ex-vessel value minus the cost recovery fee.

* * * * *

5. In § 660.112, add paragraph (a)(6) to read as follows:

§ 660.112 Trawl fishery – prohibitions.

* * * * *

(a) * * *

(6) Cost recovery program. (i) Fail to fully pay or collect any fee due under the cost recovery program specified at § 660.115 and/or otherwise avoid, decrease, interfere with, hinder, or delay any such payment or collection.

(ii) Convert, or otherwise use any paid or collected fee for any purpose other than the purposes specified in this subpart.

(iii) For the Shorebased IFQ Program and the MS Coop Program, fail to deposit on time the full amount of all fee revenue collected under the cost recovery program specified at § 660.115 into a deposit account, or fail to timely disburse the full amount of all deposit principal to the Fund.

(iv) Fail to maintain records as required by § 660.113 and/or fail to make reports to

NMFS as required under § 660.113.

(v) Fail to advise NMFS of any fish buyer's failure to collect any fee due and payable under the cost recovery program specified at § 660.115.

(vi) Refuse to allow NMFS employees, agents, or contractors to review and audit all records and other information required to be maintained as set forth in § 660.113, and/or § 660.115.

(vii) Make any false statement to NMFS, including any NMFS employee, agent or contractor, concerning a matter related to the cost recovery program described in this subpart.

(viii) Obstruct, prevent, or delay, or attempt to obstruct, prevent, or delay, any audit or investigation NMFS employees, agents, or contractors conduct, or attempt to conduct, in connection with any of the matters in the cost recovery program described in this subpart.

* * * * *

6. In § 660.113, add paragraphs (b)(5), (c)(5), and (d)(5) to read as follows:

§ 660.113 Trawl fishery—recordkeeping and reporting.

* * * * *

(b) * * *

(5) Cost recovery program. In addition to the requirements at paragraph (a) of this section, the fish buyer, as defined at § 660.111 for the Shorebased IFQ Program, is required to comply with the following recordkeeping and reporting requirements:

(i) Reporting. The fish buyer must submit a cost recovery form at the time cost recovery fees are paid to NMFS as specified at § 660.115. The cost recovery form requires providing information that includes, but is not limited to, fish buyer's name, address, phone number, first receiver site license number, month and year of landings, weight of landings, ex-vessel value,

and fee due.

(ii) Recordkeeping. The fish buyer must maintain the following records:

(A) For all deliveries of groundfish that the fish buyer buys from each fish seller:

(1) The date of delivery,

(2) The fish seller's identity,

(3) The weight of each species of groundfish delivered,

(4) Information sufficient to specifically identify the fishing vessel which delivered the groundfish,

(5) The ex-vessel value of each species of groundfish,

(6) The net ex-vessel value of each species of groundfish,

(7) The identity of the payee to whom the net ex-vessel value is paid, if different than the fish seller,

(8) The date the net ex-vessel value was paid,

(9) The total fee amount collected as a result of all groundfish.

(B) For all fee collection deposits to and disbursements from the deposit account:

(1) The date of each deposit in to the deposit account required at § 660.115(d)(1)(ii)(A),

(2) The total amount deposited in to the deposit account,

(3) The date of each disbursement,

(4) The total amount disbursed,

(5) The dates and amounts of disbursements to the fish buyer, or other parties, of interest earned on deposits.

(c) * * *

(5) Cost recovery program. In addition to the requirements at paragraph (a) of this

section, the fish buyer, as defined at § 660.111 for the MS Coop Program, is required to comply with the following recordkeeping and reporting requirements:

(i) Reporting. (A) Cost recovery form. The fish buyer must submit a cost recovery form at the time cost recovery fees are paid to NMFS as specified at § 660.115. The cost recovery form requires providing information that includes, but is not limited to, fish buyer's name, address, phone number, MS permit number, vessel name, USCG vessel documentation number, month and year of deliveries, weight of deliveries, ex-vessel value, and fee due.

(B) Annual report. By March 31 each year, each fish buyer must submit to NMFS a report containing the following information from the preceding calendar year for all groundfish each fish buyer purchases from fish sellers:

- (1) Total weight bought,
- (2) Total ex-vessel value paid,
- (3) Total fee amounts collected,
- (4) Total fee collection amounts deposited by month,
- (5) Dates and amounts of monthly disbursements to the Fund.

(ii) Recordkeeping. The fish buyer must maintain the following records:

(A) For all deliveries of groundfish that the fish buyer buys from each fish seller:

- (1) The date of delivery,
- (2) The fish seller's identity,
- (3) The weight of each species of groundfish delivered,
- (4) Information sufficient to specifically identify the fishing vessel which delivered the groundfish,
- (5) The ex-vessel value of each species of groundfish,

- (6) The net ex-vessel value of each species of groundfish,
- (7) The identity of the payee to whom the net ex-vessel value is paid, if different than the fish seller,
- (8) The date the net ex-vessel value was paid,
- (9) The total fee amount collected as a result of all groundfish.
- (B) For all fee collection deposits to and disbursements from the deposit account:
 - (1) The date of each deposit in to the deposit account required at §660.115(d)(1)(ii)(A),
 - (2) The total amount deposited in to the deposit account,
 - (3) The date of each disbursement,
 - (4) The total amount disbursed,
 - (5) The dates and amounts of disbursements to the fish buyer, or other parties, of interest earned on deposits.

(d) * * *

(5) Cost recovery program. In addition to the requirements at paragraph (a) of this section, the fish buyer, as defined at § 660.111 for the C/P Coop Program, is required to comply with the following recordkeeping and reporting requirements:

(i) Reporting. The fish buyer must submit a cost recovery form at the time cost recovery fees are paid to NMFS as specified at §660.115. The cost recovery form requires providing information that includes, but is not limited to, fish buyer's name, address, phone number, C/P-endorsed limited entry permit number, vessel name, USCG vessel documentation number, year of harvest, weight, ex-vessel value, and fee due.

(ii) Recordkeeping. The fish buyer must maintain the following records:

(A) For all groundfish:

(1) The date of harvest,
(2) The weight of each species of groundfish harvested,
(3) Information sufficient to specifically identify the fishing vessel which harvested the groundfish,

(4) The ex-vessel value of each species of groundfish,
(5) The net ex-vessel value of each species of groundfish,
(6) The total fee amount collected as a result of all groundfish.

(B) For all disbursements to NMFS:

(1) The date of each disbursement,
(2) The total amount disbursed.

7. Section 660.115 is added to read as follows:

§ 660.115 Trawl fishery—cost recovery program.

(a) General. The cost recovery program collects mandatory fees of up to three percent of the ex-vessel value of fish harvested by sector under the trawl rationalization program in accordance with the Magnuson-Stevens Act. NMFS collects the fees to recover the actual costs directly related to the management, data collection, and enforcement of the trawl rationalization program. In addition to the requirements of this section, the following groundfish regulations also apply:

(1) Regulations set out in the following sections of subpart C: § 660.11 Definitions and § 660.25 Permits.

(2) Regulations set out in the following sections of subpart D: § 660.111 Definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.140 Shorebased IFQ Program, § 660.150 MS Coop Program, and § 660.160 C/P Coop

Program.

(b) Fee percentage by sector. The annual fee percentage by sector is calculated as described in paragraph (b)(1) of this section. NMFS will establish the fee percentage each year and will announce the fee percentage by sector in accordance with paragraph (b)(2) of this section. The fee percentage must not exceed three percent of the ex-vessel value of fish harvested by sector under the trawl rationalization program pursuant to the Magnuson-Stevens Act at 16 U.S.C. 1854(d)(2)(B).

(1) Calculation. In the last quarter of each calendar year, NMFS will calculate the fee percentage by sector based on information from the previous fiscal year (defined at § 660.11). The fee percentage will be rounded to the nearest 0.1 percent and must not exceed three percent for each sector (Shorebased IFQ Program, MS Coop Program, and C/P Coop Program). NMFS will use the following equation to annually determine the fee percentage by sector: Fee percentage = the lower of 3% or $(DPC/V) \times 100$, where:

(i) “DPC,” or direct program costs, are the actual incremental costs for the previous fiscal year directly related to the management, data collection, and enforcement of each sector (Shorebased IFQ Program, MS Coop Program, and C/P Coop Program). Actual incremental costs means those net costs that would not have been incurred but for the implementation of the trawl rationalization program, including additional costs for new requirements of the program and reduced trawl sector related costs resulting from efficiencies as a result of the program. If the amount of fees collected by NMFS is greater or less than the actual net incremental costs incurred, the DPC will be adjusted accordingly for calculation of the fee percentage in the following year.

(ii) “V” is, for each applicable sector, the total ex-vessel value, as defined at § 660.111,

from the previous calendar year attributable to that sector of the trawl rationalization program (Shorebased IFQ Program, MS Coop Program, and C/P Coop Program).

(2) Notification of the fee percentage and MS average pricing. During the last quarter of each calendar year, NMFS will announce the following through a Federal Register notice:

(i) The fee percentage to be applied by fish buyers and fish sellers, for each sector, that will be in effect for the upcoming calendar year, and

(ii) The average MS price per pound from the previous fiscal year as reported for the MS Coop Program to be used in the C/P Coop Program to calculate the fee amount for the upcoming calendar year as specified in paragraph (c) of this section.

(iii) Information on how to pay in to the Fund subaccount as specified at paragraph (d) of this section.

(c) Fee amount. The fee amount is the ex-vessel value, as defined at § 660.111, for each sector multiplied by the fee percentage for that sector as announced in accordance with paragraph (b)(2) of this section.

(d) Fee payment and collection—(1) Fee payment and collection in the Shorebased IFQ Program and MS Coop Program. Payment of fees at the fee percentage rate announced in paragraph (b)(2) of this section begins January 1 and continues without interruption through December 31 each year.

(i) Between the fish seller and fish buyer. Except as described below, the full fee is due and payable at the time of fish landing/delivery. Each fish buyer must collect the fee at the time of fish landing/delivery by deducting the fee from the ex-vessel value before paying the net ex-vessel value to the fish seller. Each fish seller must pay the fee at the time of fish landing/delivery by receiving from the fish buyer the net ex-vessel value, as defined at §

660.111.

(A) In the event of any post-delivery payment for fish, the fish seller must pay, and the fish buyer must collect, at the time the amount of such post-landing/delivery payment, the fee that would otherwise have been due and payable at the time of initial fish landing/delivery.

(B) When the fish buyer and fish seller are the same entity, that entity must comply with the requirements for both the fish seller and the fish buyer as specified in this section.

(ii) Between the fish buyer and NMFS-- (A) Deposit accounts. Each fish buyer shall maintain a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue from the cost recovery program specified in this section and disbursing the deposit principal directly to NMFS in accordance with paragraph (d)(1)(ii)(C) of this section.

(B) Fee collection deposits. Each fish buyer, no less frequently than at the end of each month, shall deposit, in the deposit account established under paragraph (d)(1)(ii)(A) of this section, all fees collected, not previously deposited, that the fish buyer collects through a date not more than two calendar days before the date of deposit. The deposit principal may not be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the Fund in accordance with paragraph (d)(1)(ii)(C) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the deposit account for the fish buyer's own use and purposes.

(C) Deposit principal disbursement. Not later than the 14th calendar day after the last calendar day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full deposit principal then in the deposit account. The fish buyer shall disburse deposit principal by electronic payment to

the Fund subaccount to which the deposit principal relates. NMFS will announce information about how to make an electronic payment to the Fund subaccount in the notification on fee percentage specified in paragraph (b)(2) of this section. Each disbursement must be accompanied by a cost recovery form provided by NMFS. Recordkeeping and reporting requirements are specified in paragraph (d)(4) of this section and at § 660.113(b)(5) for the Shorebased IFQ Program and § 660.113(c)(5) for the MS Coop Program. The cost recovery form will be available on the pay.gov website.

(2) Fee payment and collection in the C/P Coop Program. Payment of fees for the calendar year at the fee percentage rate announced in paragraph (b)(2) of this section is due in the last quarter of the calendar year and no later than December 31 each year. The fish buyer is responsible for fee payment to NMFS. The fish seller and the fish buyer, as defined at § 660.111, are considered the same entity in the C/P Coop Program. The fish buyer shall disburse to NMFS the full fee amount for the calendar year by electronic payment to the Fund subaccount. NMFS will announce information about how to make an electronic payment to the Fund subaccount in the notification on fee percentage specified in paragraph (b)(2) of this section. Each disbursement must be accompanied by a cost recovery form provided by NMFS. Recordkeeping and reporting requirements are specified in paragraph (d)(4) of this section and at § 660.113(d)(5) for the C/P Coop Program. The cost recovery form will be available on the pay.gov website.

(3) Failure to pay or collect-- (i) Responsibility to notify NMFS. (A) If a fish buyer fails to collect the fee in the amount and manner required by this section, the fish seller shall then advise the fish buyer of the fish seller's fee payment obligation and of the fish buyer's cost recovery fee collection obligation. If the fish buyer still fails to properly collect the fee, the fish

seller, within the next 7 calendar days, shall forward the fee to NMFS. The fish seller at the same time shall also advise NMFS in writing at the address in paragraph (d)(3)(i)(C) of this section of the full particulars, including:

- (1) The fish buyer's and fish seller's name, address, and telephone number,
- (2) The name of the fishing vessel from which the fish seller made fish delivery and the date of doing so,
- (3) The weight and ex-vessel value of each species of fish that the fish seller delivered, and
- (4) The fish buyer's reason, if known, for failing or refusing to collect the fee in accordance with this subpart;

(B) Notifications must be mailed or faxed to: National Marine Fisheries Service, West Coast Region, Office of Management and Information, ATTN: Cost Recovery Notification, 7600 Sand Point Way NE., Seattle, WA, 98115; Fax: 206-526-6426; or delivered to National Marine Fisheries Service at the same address.

(ii) IAD, appeals, and final decision. If NMFS determines the fish buyer or other responsible party has not submitted a complete cost recovery form and corresponding payment by the due date specified in paragraphs (d)(1) and (2) of this section, NMFS will at any time thereafter notify the fish buyer or other responsible party in writing via an initial administrative determination (IAD) letter.

(A) IAD. In the IAD, NMFS will state the discrepancy and provide the person 30 calendar days to either pay the specified amount due or appeal the IAD in writing.

(B) Appeals. If the fish buyer appeals an IAD, the appeal must be postmarked, faxed, or hand delivered to NMFS no later than 30 calendar days after the date on the IAD. If the last day

of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of business on the next business day. The appeal must be in writing, must allege credible facts or circumstances, and must include any relevant information or documentation to support the appeal. Appeals must be mailed, faxed, or hand-delivered to: National Marine Fisheries Service, West Coast Region, Office of Management and Information, ATTN: Cost Recovery Appeals, 7600 Sand Point Way NE., Seattle, WA, 98115; Fax: 206-526-6426; or delivered to National Marine Fisheries Service at the same address.

(C) Final decision-- (1) Final decision on appeal. For the appeal of an IAD, the Regional Administrator shall appoint an appeals officer. After determining there is sufficient information and that all procedural requirements have been met, the appeals officer will review the record and issue a recommendation on the appeal to the Regional Administrator, which shall be advisory only. The recommendation must be based solely on the record. Upon receiving the findings and recommendation, the Regional Administrator, acting on behalf of the Secretary of Commerce, will issue a written decision on the appeal which is the final decision of the Secretary of Commerce.

(2) Final decision if there is no appeal. If the fish buyer does not appeal the IAD within 30 calendar days, NMFS will notify the fish buyer or other responsible party in writing via a final decision letter. The final decision will be from the Regional Administrator acting on behalf of the Secretary of Commerce.

(3) If the final decision determines that the fish buyer is out of compliance, the final decision will require payment within 30 calendar days. If such payment is not received within 30 calendar days of issuance of the final decision, NMFS will refer the matter to the appropriate authorities for purposes of collection. As of the date of the final decision if the fish buyer is out

of compliance, NMFS will not approve a permit renewal for an MS permit or a C/P-endorsed limited entry trawl permit until all cost recovery fees due have been paid as specified at § 660.25(b)(4)(i)(G); or reissue an IFQ first receiver site license until all cost recovery fees due have been paid, as specified at § 660.140(f)(4).

(4) Recordkeeping, reporting, and audits-- (i) Recordkeeping. Each fish buyer and fish seller shall retain records in accordance with § 660.113(a). In addition, fish buyers shall retain records in accordance with the following paragraphs: § 660.113(b)(5) for the Shorebased IFQ Program, § 660.113(c)(5) for the MS Coop Program, and § 660.113(d)(5) for the C/P Coop Program.

(ii) Reporting, including annual report. Each fish buyer shall submit reports in accordance with the following paragraphs: § 660.113(b)(5) for the Shorebased IFQ Program, § 660.113(c)(5) for the MS Coop Program, and § 660.113(d)(5) for the C/P Coop Program. The fish buyer must submit a cost recovery form along with fee payment to NMFS. By March 31 each year, fish buyers in the MS Coop Program must submit an annual report to NMFS containing information from the preceding calendar year as specified at § 660.113(c)(5).

(iii) Audits. NMFS or its agents may audit, in whatever manner NMFS determines reasonably necessary for the duly diligent administration of the cost recovery program, the financial records of fish buyers and fish sellers in order to ensure proper fee payment, collection, deposit, disbursement, accounting, recordkeeping, and reporting. Fish buyers and fish sellers must respond to any inquiry by NMFS or a NMFS agent within 20 calendar days of the date of issuance of the inquiry, unless an extension is granted by NMFS. Fish buyers and fish sellers shall make all relevant records available to NMFS or NMFS' agents at reasonable times and places and promptly provide all requested information reasonably related to these records.

NMFS may employ a third party agent to conduct the audits. The NMFS auditor may review and request copies of additional data provided by the submitter, including but not limited to, previously audited or reviewed financial statements, worksheets, tax returns, invoices, receipts, and other original documents substantiating the data submitted.

8. In § 660.140:

- a. Revise paragraph (a)(2);
- b. Add paragraphs (b)(1)(x) and (b)(2)(ix);
- c. Add text to reserved paragraph (e)(8);
- d. Revise paragraphs (f)(4) and (6); and
- d. Add paragraph (f)(10).

The revisions and additions read as follows:

§ 660.140 Shorebased IFQ Program.

(a) * * *

(2) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.115 Trawl fishery cost recovery program, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

* * * * *

(b) * * *

(1) * * *

(x) Fish sellers must pay cost recovery program fees, as specified at § 660.115.

(2) * * *

(ix) Collect and remit to NMFS cost recovery program fees, as specified at §660.115.

* * * * *

(e) * * *

(8) Cost recovery. The fish seller, as defined at § 660.111, is subject to the cost recovery program specified at § 660.115.

(f) * * *

(4) Initial administrative determination. For all complete applications, NMFS will issue an IAD that either approves or disapproves the application. If approved, the IAD will include a first receiver site license. If disapproved, the IAD will provide the reasons for this determination. NMFS will not reissue a first receiver site license until the required cost recovery program fees, as specified at § 660.115, have been paid. The IAD, appeals, and final decision process for the cost recovery program is specified at § 660.115(d)(3)(ii).

* * * * *

(6) Reissuance in subsequent years. Existing license holders must reapply annually. If the existing license holder fails to reapply, the first receiver's site license will expire as specified in paragraph (f)(5) of this section. The IFQ first receiver will not be authorized to receive IFQ species from a vessel if their first receiver site license has expired. NMFS will not reissue a first receiver site license until all required cost recovery program fees, as specified at § 660.115, associated with that license have been paid.

* * * * *

(10) Cost recovery. The first receiver site license holder is considered the fish buyer as defined at § 660.111, and must comply with the cost recovery program specified at § 660.115.

* * * * *

9. In § 660.150:

- a. Revise paragraphs (a)(4) and (b)(1)(ii)(A);
- b. Add paragraphs (b)(1)(ii)(D) and (b)(2)(ii)(C);
- c. Remove paragraph (d)(5);
- d. Revise paragraph (f)(6); and
- e. Add paragraph and (g)(7).

The revisions and additions read as follows:

§ 660.150 Mothership (MS) Coop Program.

(a) * * *

(4) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.115 Trawl fishery cost recovery program, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) Recordkeeping and reporting. Maintain a valid declaration as specified at § 660.13(d); maintain records as specified at § 660.113(a); and maintain and submit all records and reports specified at § 660.113(c) including, economic data, scale tests records, cease fishing reports, and cost recovery.

* * * * *

(D) Cost recovery program. Collect and remit to NMFS cost recovery program fees as specified at § 660.115.

* * * * *

(2) * * *

(ii) * * *

(C) Cost recovery program. Vessel must pay cost recovery program fees, as specified at § 660.115.

* * * * *

(f) * * *

(6) Cost recovery. The owner of a vessel registered to an MS permit, the operator of a vessel registered to an MS permit, and the owner of the MS permit registered to that vessel, are considered to be the fish buyer as defined at § 660.111, and must comply with the cost recovery program specified at § 660.115.

(g) * * *

(7) Cost recovery. The fish seller, as defined at § 660.111, is subject to the cost recovery program specified at § 660.115.

* * * * *

10. In § 660.160:

- a. Revise paragraphs (a)(4) and (b)(1)(ii)(A);
- b. Add paragraph (b)(1)(ii)(D);
- c. Remove paragraph (d)(5);
- d. Add paragraph (e)(5); and
- e. Remove paragraph (e)(6).

The revisions and additions read as follows:

§ 660.160 Catcher/ processor (C/P) Coop Program.

(a) * * *

(4) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.115 Trawl fishery cost recovery program, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) Recordkeeping and reporting. Maintain a valid declaration as specified at §660.13(d); maintain records as specified at § 660.113(a); and maintain and submit all records and reports specified at § 660.113(d) including, economic data, scale tests records, cease fishing reports, and cost recovery.

* * * * *

(D) Cost recovery program. Collect and remit to NMFS cost recovery program fees, as specified at § 660.115.

* * * * *

(e) * * *

(5) Cost recovery. The owner of a vessel registered to a C/P-endorsed limited entry trawl permit, the operator of a vessel registered to a C/P-endorsed limited entry trawl permit, and the

owner of the C/P-endorsed limited entry trawl permit registered to that vessel, are considered both the fish buyer and the fish seller as defined at § 660.111, and must comply with the cost recovery program specified at § 660.115.

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